

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7857 OF 1997

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

RATILALBHAI NANJIBHAI GAMI & ORS.
VERSUS
STATE OF GUJARAT & ORS.

Appearance:

MR MM DEVANI for Petitioners
MR DA BAMBHANIA for Respondents

Coram: S.K. Keshote,J
Date of decision: 19/01/1998

C.A.V. JUDGMENT

#. The petitioners, in all 34 in number, who were in the services of the State of Gujarat, in the Department of Agriculture, filed this Special Civil Application before this Court under Article 226 of the Constitution of India

and prayer has been made for quashing and setting aside of the order of the Government dated 2.8.97 and the consequential orders which have been passed on 19th August 1997 and 3rd October 1997.

#. Briefly stated, the facts of the case are that the petitioners No.1 to 32 have already retired on different dates from the Government services. The petitioners No.33 and 34 are the legal heirs of the employees who have expired after their retirement. In pursuance of the order annexure 'D' dated 1.3.93, the petitioners under the order dated 23rd September 1993 of the respondent No.2, annexure 'E', were given the benefits of the higher pay scale. Under the orders dated 19th August 1997 and 3rd October 1997 of the respondent No.2, grant of higher pay scale to the petitioners was ordered to be cancelled and further direction has been given for recovery of excess amount paid to them. These orders have been challenged by the petitioners on manifold grounds but it is not necessary to advert to all those grounds except the ground that these orders have been passed without any notice and opportunity of hearing to them.

#. The respondents have filed reply to the Special Civil Application and contention has been made therein that for the eligibility and the entitlement of the higher pay scale, the employees concerned have to possess all the requisite eligibilities prescribed for promotion to the next higher post. The recruitment rules regarding promotion to the post of Agricultural Officers, Gujarat Agricultural Services Class II, have been amended and for promotion, minimum qualification is of Bachelor's Degree in Science (Agriculture) and none of the petitioners possessed that qualification and as such, the orders which have been passed granting them the benefit of higher pay scale have rightly been reviewed and recovery has rightly been ordered. However, in the reply as well as during the course of arguments, the learned counsel for the respondents has fairly admitted that the orders impugned in this Special Civil Application have been passed without any notice or opportunity of hearing to the petitioners.

#. The petitioners were admittedly given the benefit of higher pay scale in the year 1993 and they were enjoying these benefits for all the years and this Court has also protected them by grant of interim relief in terms of para 21(D) of the Special Civil Application, which reads as under:

Pending admission and till final disposal of the

present Special Civil Application, grant stay as to the operation, implementation and execution of the orders dated 19.8.97 at Annexure-H, 19.8.97 at Annex.I and dated 3.10.97 at Annexure-J passed by the Respondent No.2 in the interest of justice.

#. I do not consider it to be appropriate to go on the larger issues raised by the learned counsel for the petitioners that in case the qualifications as prescribed for promotion have been adhered to as the condition precedent for eligibility and entitlement for the benefit of higher pay scale, then many of the petitioners will not get any benefit and they will retire from the very pay scale on which they have been appointed. The effect of these orders is reduction of pay scale of the petitioners as well as consequential reduction in their emoluments. The petitioners have also been retired from the services and as such, this order will have further serious repercussions of reduction of their pension and other amount of retirementary benefits. Though orders may be administrative orders and it may be the case of correction of mistake made by respondents, as alleged in the reply to the Special Civil Application and projected during the course of arguments, but when these orders have serious civil consequences of the nature, namely (i) reduction of pay scale, (ii) reduction of emoluments, (iii) consequential effect of reduction of pension and other amount of retirementary benefits, it was obligatory on the part of respondents to follow the principles of natural justice before making the orders impugned. These orders though may be administrative, but they adversely effect the service conditions of the petitioners as well as their pension and other retirementary benefits. No reason, good, bad or indifferent has been put forth by respondents as to why the petitioners have not been afforded the opportunity of hearing before passing of such orders which have very drastic results and which causes serious prejudice to the petitioners. So only on this short ground, this Special Civil Application succeeds and the same is allowed and the order dated 19th August 1997, annexure 'H', 19th August 1997, annexure 'I' and 3rd October 1997, annexure 'J', are quashed and set aside. It is however made clear that acceptance of this writ petition will not come in the way of respondents to pass appropriate orders in accordance with law after giving notice and opportunity of hearing to the petitioners. Rule made absolute with no order as to costs.

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(sunil)

